

SHEARMAN & STERLING LLP

Henry Weisburg
Kristen M. Fitzmaurice
599 Lexington Avenue
New York, NY 10022-6069
Telephone: (212) 848-4000
Facsimile: (212) 848-7179

07 08 7486

Attorneys for Plaintiff
Wachovia Bank, National Association

JUDGE HOLWELL

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

WACHOVIA BANK, NATIONAL
ASSOCIATION,

Plaintiff,

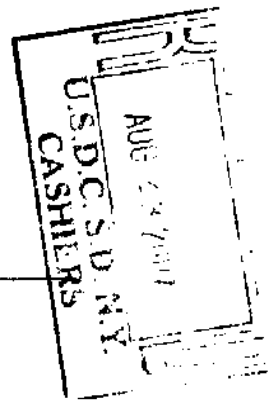
v.

THORNBURG MORTGAGE, INC.,

Defendant.

Case No: _____

COMPLAINT



INTRODUCTION

Plaintiff Wachovia Bank, National Association ("Wachovia" or "Plaintiff"), for its complaint against Thornburg Mortgage, Inc., ("Thornburg Mortgage" or "Defendant") alleges as follows:

1. This is an action for breach of contract based on Thornburg Mortgage's failure to pay \$5,123,563.08 to Wachovia pursuant to the terms of an ISDA Master Agreement, dated October 9, 2003.

PARTIES

2. Plaintiff Wachovia is a national banking association with principal places of business at 301 South College Street, Charlotte, North Carolina and 375 Park Avenue, New York, New York.

3. Defendant Thornburg Mortgage is a Maryland corporation with a principal place of business at 150 Washington Avenue, Ste. 302, Santa Fe, New Mexico. Thornburg Mortgage is a residential single-family mortgage lender specializing in jumbo adjustable-rate mortgage programs.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) and 1332(c). The parties to this action are citizens of different states. The amount in controversy exceeds \$75,000.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2) and (c) because a substantial part of the events giving rise to Plaintiff's claim occurred in this judicial district, and Defendant is subject to personal jurisdiction in this judicial district.

FACTUAL BACKGROUND

6. On October 9, 2003, Wachovia and Thornburg Mortgage entered into an ISDA Master Agreement, together with a Schedule to the ISDA Master Agreement and a Credit Support Annex (together, the "Agreement").

7. Pursuant to the Agreement, the parties entered into derivatives contracts, including a series of interest rate swaps (the "Swaps").

8. Between August 10, 2007 and August 13, 2007, Wachovia and Thornburg agreed to unwind, or terminate the Swaps.

9. Upon the termination of the Swaps on August 13, 2007, the terms of the Agreement required Thornburg Mortgage to return collateral to Wachovia in the amount of \$5,123,563.08, not later than 6:00 p.m. EST on August 15, 2007.

10. Neither the terms of the Agreement nor the amount owed by Thornburg Mortgage to Wachovia are in dispute. Thornburg Mortgage agreed – and continues to acknowledge – that, pursuant to the Agreement, it owes Wachovia \$5,123,563.08.

11. From August 13, 2007, the derivatives trading group of Wachovia in New York began contacting Thornburg Mortgage regarding the return of the collateral at issue. Further, Wachovia has given Thornburg Mortgage all notices required to be given under the Agreement.

12. Despite the clear terms of the Agreement, however, Thornburg Mortgage has failed to pay Wachovia.

13. On August 22, 2007, continuing to willfully breach the Agreement, Thornburg Mortgage informed Wachovia that it intends to continue to pay other, unrelated counterparties with which it has established business relationships before it pays Wachovia.

14. To date, the payment at issue remains outstanding. Despite its repeated acknowledgement of the amount it owes to Wachovia, Thornburg Mortgage refuses to transfer the funds owed to Wachovia pursuant to the Agreement.

CLAIM FOR RELIEF

15. Wachovia and Thornburg Mortgage entered into the Agreement on October 9, 2003. The Agreement governed the derivatives contracts entered into by the parties, including the Swaps.

16. Wachovia and Thornburg Mortgage agreed to terminate the Swaps on August 13, 2007. Pursuant to the terms of the Agreement, Thornburg Mortgage was then required to transfer funds in the amount of \$5,123,563.08 to Wachovia, not later than 6:00 p.m. EST on August 15, 2007.

17. Wachovia has fulfilled its obligations under the Agreement.

18. Thornburg Mortgage has breached the Agreement by refusing to pay Wachovia the amount due upon the termination of the Swaps.

19. In addition to the amount due, Wachovia is entitled pursuant to the Agreement to recover two types of interest. Paragraph 6(d)(ii) of the Credit Support Annex requires Thornburg Mortgage to pay interest on the amount outstanding. Additionally, Section 2(e) requires Thornburg to pay default interest. Such interest is calculated on the basis of daily compounding and the actual number of days that have elapsed from, and including, the original due date for payment to the actual date of payment.


20. Further, Wachovia is entitled to recover legal expenses. Section 11 of the Agreement requires Thornburg Mortgage to indemnify Wachovia against any reasonable expenses it incurs during the enforcement and protection of its rights under the Agreement, including legal fees.

WHEREFORE, Wachovia demands judgment against Thornburg Mortgage as follows:

- A. Damages in the amount of \$5,123,563.08, plus legal expenses and interest, as permitted by the Agreement.
- B. Such further relief as this Court may deem just and proper.

Dated: New York, New York
August 23, 2007

SHEARMAN & STERLING LLP

By: 

Henry Weisburg
Kristen M. Fitzmaurice
599 Lexington Avenue
New York, NY 10022
(212) 848-4000
(212) 848-7179 (facsimile)

Attorneys for Wachovia